IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9881 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMBHAI RATANJI AHIR

Versus

SURAT ELECTRICITY CO.LTD.

Appearance:

MR UNMESH D SHUKLA for Petitioners

MR MD PANDYA for Respondent No. 1

MR NILESH M SHAH for Respondent No. 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 04/04/2001

ORAL JUDGEMENT

1. Rule. Heard Learned counsel appearing on behalf of the parties. Mr. MD Pandya and Mr. Nilesh M Shah, Learned Counsel appearing on behalf of Respondent No. 1

& 2 respectively waives service of rule.

2. The present petition by the petitioners is for a direction on the respondent No.1 Surat Electricity Company Limited to provide power connection in the premisses of the petitioners No. 9 to 12 in connection with their application No: 165755 to 165776 & 165807. The respondent No.2 objects for giving power line to the premises of respondents No. 9 to 12 on the ground that the predecessor of respondent no. 1 to 7, entered into a contract with respondent No.2 for sale of the entire premises and respondent No. 2 had made part payment of the consideration money. However, petitioner No.1 did not sale the property to respondent No.2. In the meantime the petitioner No.1 to 7 transferred the property in favour of petitioners No. 9 to 12 and in pursuance of sale deed dated 19-12-1996 they became owners of the aforesaid property. However respondent No.2 filed a civil suit being Suit No. 5 of 1997 in the Court of Civil Judge (S.D.) Surat for specific performance of contract. The said suit is still pending and interim order has been passed by the Court in that suit, restraining petitioner No.1 from transferring or alienating the suit property. However, before passing of the aforesaid order on 6-4-1999 petitioner No.1 has already transferred the suit property in favour of the petitioner No. 9 to 12 by sale deed dated 19-12-1996. After purchase of the property the petitioner No. 9 to 12 constructed houses and applied to Surat Electricity Company for providing power connection in their premises. However, respondent Surat Electricity Company till now did not provide power connection in the premises of petitioner No. 9 to 12. When the applications for supply of power to petitioners were pending, the respondent No.2 filed another suit before the Civil Judge (S.D.), Surat, for a declaration that the respondent no.1 Surat Electricity Company should not provide electricity connection in the premises of petitioner No. 9 to 12 without permission of the Court, however no order has been passed by the Civil Court.

3. Learned Counsel Mr. M.D. Pandya, appearing on behalf of respondent No.1 Surat Electricity Company submitted that the Company has filed a written statement and in the written statement the Company has made it clear that, they do not want to enter into any controversy or they do not want to involve in any contempt matter and therefore it is stated by the Company in the said written statement that, unless the dispute is decided between the parties, the Company may not be in a position to provide power connection in the premises of

respondent No. 1.

4. Learned counsel for the petitioners submitted that petitioner No. 9 to 12 constructed their residential premises and they are without electricity as the respondent No.1 Surat Electricity Company has not yet provided power connection in their premises. It is true that Surat Electricity Company in the second suit filed by respondent No.2 stated in the written statement that unless the dispute is resolved between the parties, it may not be possible for the Company to provide electricity in the premises of petitioner No. 9 to 12. It is an admitted fact that the suit for specific performance of the contract filed by respondent No.2 against respondent No.1 is still pending in the Court of Civil Judge (S.D.) Surat. Unless the respondent No.2 gets a decree in the said suit, he cannot be said to be the owner of the disputed property. Before filing of the suit petitioner No. 9 to 12 purchased the suit property, but the said petitioner No. 9 to 12 have not yet been made parties either in the suit for specific performance of contract, or the second suit filed by respondent No.2. For the decision of the suits it may take some time, but when the petitioner No. 9 to 12 are admittedly in possession of the premises and they require power connection for their day to day use, I am of the view that, there is no reason on the part of respondent No.1 Surat Electricity Company not to provide powerline/ power connection in the premises of petitioner No. 9 to 12. If respondent No.2 succeeds in the suit for specific performance of contract, then the power line provided by respondent No.1 Surat Electricity Company to the petitioner no. 9 to 12 may be withdrawn, but till respondent No.2 becomes owner of the suit property, I am of the view, nothing prevents respondent No.1 to provide electricity / powerline in the premises of petitioner No. 9 to 12. Accordingly respondent No.1 Surat Electricity Company is directed to provide powerline in the premises of Petitioner No. 9 to 12, provided petitioners completes the formalities and provides land to the respondent No.1 for extending such powerline to their premises.

5. Accordingly the petition is allowed. Rule made absolute to the aforesaid extent. However, I make no order as to costs.

6. Learned counsel for the respondent No.2 prays for stay of this order, but in view of the fact that electricity is essential to the life of the community, I do not think it proper to stay this order, and

accordingly said prayer is rejected.

Dt: 4-4-2001 (P.K. Sarkar, J)

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